

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 633/2016 (S.B.)

Hitendra S/o Abhiman Gajbhiye,
Aged about 52 years,
Head Quarter Assistant
R/o at Post Kharashi, Tq. Lakhni,
Dist. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
- 2) Deputy Director of Land Record,
Nagpur, Dist. Nagpur.
- 3) District Superintendent of Land Record,
Bhandara, Dist. Bhadara.
- 4) District Superintendent of Land Record,
Sakoli, Dist. Bhadara.

Respondents.

Shri N.S. Warulkar, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 634/2016 (S.B.)

Hitendra S/o Abhiman Gajbhiye,
Aged about 52 years,
Head Quarter Assistant
R/o at Post Kharashi, Tq. Lakhni,
Dist. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
- 2) Deputy Director of Land Record,
Nagpur, Dist. Nagpur.
- 3) District Superintendent of Land Record,
Bhandara, Dist. Bhadara.
- 4) District Superintendent of Land Record,
Sakoli, Dist. Bhadara.

Respondents.

Shri N.S. Warulkar, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 8th day of April,2019)

Heard Shri N.S. Warulkar, learned counsel for the applicant and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2) The applicant was appointed as Scrutiny Clerk in year 2006, thereafter he was promoted as Maintenance Surveyor. The applicant was working as Head Quarter Assistant under the respondent No.4.

3) In O.A. No. 633/2016, the respondent No.4 issued show cause notice to the applicant dt/17-1-2015 and called explanation of the applicant as to why the applicant carried out private measurement, it was also alleged in the notice that the applicant was demanding Rs. 200-500/ for issuing "Aakhiv Patrika" and was harassing the public. The applicant replied the show cause notice and denied all the allegations. The respondent No.4 thereafter issued second show cause notice dt/2-2-2014, in this notice it was alleged that the applicant submitted the report to the court without seeking permission of the Head of the Office. The applicant replied this notice it was replied that in the court proceeding the applicant was made party, therefore, it was necessary for him to submit his reply. It was submitted by the applicant that he did not commit any misconduct.

4) The respondent No.4 thereafter issued memo dt/16-3-2015 mentioning that the reply submitted by the applicant was not satisfactory and informed that it was decided to proceed against applicant under Rule 5(4) of MCS (Discipline and Conduct) Rules 1979. This memo was received by the applicant on 19-3-2015. The applicant submitted his reply to the memo dt/16-3-2015 vide reply

dt/27-3-2015. The respondent No.4 passed impugned order on 4-4-2015 and directed to withhold annual increments of the applicant for years 2015 to 2016 and 2016 to 2017 for two years.

5) This order is attacked on the ground that the impugned order is cryptic; the respondent No 4 did not consider the reply submitted by the applicant to the memo. It is submitted that it is falsely observed that reply was not submitted by the applicant to the memo. It is submitted that in the order, it is not mentioned on basis of which evidence the charges were held proved, therefore, the exercise of jurisdiction was contrary to law and order be set aside.

6) In O.A. No.634-2016, on 15-10-2011 casual leave application was sent by the applicant as his wife was ill, as wife of the applicant could not recover from the illness, therefore, he submitted application on 17-10-2011 for extension of leave. On 18-10-2011 the respondent No.4 issued show cause notice to the applicant asking why he avoided measurement work by ETS machine. The applicant submitted the reply dt/ 3-11-2011 and explained. The respondent No.4 issued memo dt/29-11-2011 and decided to proceed under Rule 10 of MCS (Discipline and Conduct) Rules 1979 and called upon the applicant to submit his reply. The applicant submitted reply to the memo it is dt/ 7-12-2011. The respondent No.4 passed impugned

order observing that the reply was not satisfactory and directed to withhold increment for year 2012 to 2013 for one year.

7) The applicant challenged both the orders in departmental appeal and second appeal but both were dismissed, therefore, these orders are challenged in these applications.

8) The respondents No.1,2 and 4 have submitted reply and justified the action. It is contended that both the orders are lawful, therefore, there is no reason to interfere in the matter. It is contended that the respondent No.4 has followed the procedure laid down in Rule 10 of MCS (Discipline and Conduct) Rules 1979, consequently both the applications are liable to be dismissed.

9) I have heard submissions on behalf of the applicant and the respondents. I have examined the impugned order in O.A. No.633/2016. On perusal of the order dt/4-4-2015 it seems that the respondent No.4 mentioned in the order that in the explanation the applicant used unparliamentary language. I have gone through the reply dt/30-1-2015, 21-2-2015 and reply to memo dt/27-3-2015. After reading these replies it is difficult to accept the view of the respondent No.4 that unparliamentary language was used by the applicant. After perusal of the order impugned it seems that there is no discussion as to which were the charges and what was the evidence in support of

the charges. It is submission of the applicant that the respondent No.4 did not consider the reply submitted by the applicant to the memo and it is material illegality. It is pertinent to note that in the order impugned it is mentioned that no reply was filed by the applicant to the memo, whereas the respondent No.4 in his reply para 8 has submitted that the reply was not submitted by the applicant in stipulated time, this is somewhat contradictory. It is important to note that the applicant had replied the two previous show cause notices issued by the respondent No.4, but what stand was taken by the applicant was not considered at all by the respondent No.4. The observation in the impugned order that no reply was submitted by the applicant and the later deviation that the reply was not submitted in stipulated time makes case of the department doubtful. On the basis of these facts it can be inferred that the reply of the applicant was received but it was deliberately not considered by the respondent No.4 and this was contrary to the principles of the natural justice.

10) Even after reading the impugned order it is not possible to accept that it is in consonance with the spirit under Rule 10 of MCS (Discipline and Conduct) Rules 1979. Rule 10 (3) clauses (iv), (vi) & (vii) contemplate that the authority shall discuss what evidence was produced during inquiry and record separate findings on each

misconduct with reasons. After reading both the orders it must be said that the orders are not in conformity with the Rule 10.

11) So far as the order impugned in O.A. No.634/2016 is concerned I would like to point out that as wife of the applicant was ill, therefore, he submitted application for casual leave, as wife of the applicant could not recover from the illness he submitted application for the earn leave. It is important to note that in the show cause notice dt/17-10-2011 it is observed that the applicant first submitted application for casual leave, then he submitted application for earn leave and this was cause of the annoyance of the respondent No.4. In this show cause notice the respondent No.4 observed that earn leave was not right and therefore, he rejected the application without examining the cause.

12) In the memo dt/29-11-2011 it is mentioned that show cause notice dt/18-11-2011 was served on the applicant, but the applicant did not submit reply to the show cause notice till 29-11-2011, therefore, the memo was issued. Whereas in the order impugned it is mentioned that the show cause notice was issued to the applicant and the reply submitted by the applicant was not satisfactory, these observations are in fact self contradictory, they cannot stand together. Secondly in this order it is no where mentioned as to what was the misconduct, what evidence was produced by the department to prove

the misconduct. The order is apparently not in conformity with the provisions under Rule 10 (3) of MCS (Discipline and Conduct) Rules 1979. In view of this discussion I am compelled to say that both the orders are contrary to law, therefore, cannot be sustained. Hence the following order.

13) O.A. No.633/2016 & 634/2016 are allowed; the impugned orders passed by the respondent No.4 withholding increments of the applicant are quashed and set aside. The withheld increments be released and amount be paid to the applicant within 3 months from the date of this order.

Dated :- 08/04/2019.

(A.D. Karanjkar)
Member (J).

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